IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5274 of 2007()

[CRIME NO.170/07 OF PAVARATTY POLICE STATION]

PETITIONER/ACCUSED

SHAJEER, S/O. MUHAMMADUNNI,
ERANGATHAYIL HOUSE, KANDANASSERI.

BY ADV. SRI.P.K.VARGHESE
SRI.HRITHWIK

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5274 of 2007

Dated this the 10th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 376 I.P.C. The crux of the allegations is that the petitioner induced the de facto complainant/prosecutrix to elope with him on the promise that he shall marry her. They went together, took up a residence and from 29/4/2007 to 8/5/2007 the petitioner allegedly had sexual intercourse with the said victim. She resisted with the request that sexual intercourse can take place only after marriage. The petitioner who allegedly had no serious intention to marry her, induced her to believe that the elopement will culminate in marriage and secured her consent fraudulently. He left the girl in the lurch and has conveyed eloquently that he does not and did not have any intention to marry her at any point of time. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that there is no element of the offence of rape at all. It was a consensual sexual intercourse by any standards. In these circumstances, the petitioner may be granted anticipatory bail, it is submitted.

3. It is of course trite that the mere fact that there was a breach of a promise to marry between partners who voluntarily indulged in sexual intercourse cannot transform such consensual sexual intercourse into rape. When the consent is extracted from the gullible victim on promise which were made fraudulently with no intention to perform such promise, the case must stand on a totally different footing. At any rate, I am not satisfied that there are any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is an eminently fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007